

AMENDED IN ASSEMBLY APRIL 28, 2010

AMENDED IN ASSEMBLY APRIL 6, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2246

Introduced by Assembly Member Blakeslee

February 18, 2010

An act to add Section 243.93 to the Penal Code, relating to battery.

LEGISLATIVE COUNSEL'S DIGEST

AB 2246, as amended, Blakeslee. Battery: gassing.

Existing law establishes the State Department of Mental Health and, provides for the administration of state hospitals, and provides for the involuntary confinement of certain individuals in those state hospitals, including persons who have been found not guilty of a charge by reason of insanity, who have been found incompetent to stand trial by a judge, or have been determined, as a result of a mental disorder, to be a danger to themselves or others.

~~Existing law establishes the State Department of Developmental Services and sets forth its duties and responsibilities, including, but not limited to, administration and oversight of the state developmental centers and programs relating to persons with developmental disabilities. Existing law provides for the judicial commitment of certain persons, including a mentally retarded person who is a danger to himself or herself or others, mentally disordered sex offenders, juvenile wards in need of intensive treatment as a result of a mental disorder, and certain sexually violent predators, to the State Department of Developmental Services. A person may also be admitted to a developmental center voluntarily who is substantially disabled.~~

Existing law provides that every person confined in a local detention facility, state prison, or under the jurisdiction of the Division of Juvenile Facilities of the Department of Corrections and Rehabilitation, who commits a battery upon the person of a peace officer by “gassing,” as defined, is guilty of aggravated battery.

This bill would provide that a person confined to a state hospital ~~or residing at a state-operated developmental center operated by the State Department of Developmental Services~~ who commits battery upon the person of a peace officer or employee of a state hospital ~~or state development center~~, by gassing, is guilty of aggravated battery, ~~a felony punishable by imprisonment in county jail or state prison for 2, 3, or 4 years in the state prison.~~

The bill would also require the State Department of Mental Health ~~and the State Department of Developmental Services~~ to submit ~~reports~~ *a report* to the Legislature by January 1, 2015, regarding gassing incidents at ~~their respective institutions~~ *state hospitals*.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 243.93 is added to the Penal Code, to
2 read:
3 243.93. (a) Every person confined in a state hospital ~~or residing~~
4 ~~in a state-operated developmental center operated by the State~~
5 ~~Department of Developmental Services~~ who commits battery by
6 gassing upon the person of any peace officer, as defined in Chapter
7 4.5 (commencing with Section 830) of Title 3 of Part 2, or
8 employee of the state hospital ~~or state-operated developmental~~
9 ~~center~~ is guilty of aggravated battery and shall be punished by
10 imprisonment in a county jail or by imprisonment in the state
11 prison for two, three, or four years.

1 (b) For purposes of this section, “gassing” means intentionally
2 placing or throwing, or causing to be placed or thrown, upon the
3 person of another, any human excrement or other bodily fluids or
4 bodily substances or any mixture containing human excrement or
5 other bodily fluids or bodily substances that results in actual contact
6 with the person’s skin or membranes.

7 (c) As used in this section, “director” shall mean the director of
8 ~~the state hospital if a violation of subdivision (a) occurs in a state~~
9 ~~hospital, or to the clinical director of a state-operated~~
10 ~~developmental center operated by the State Department of~~
11 ~~Developmental Services if a violation of subdivision (a) occurs in~~
12 ~~a developmental center.~~ *of the state hospital.*

13 (d) The director of the state hospital ~~or the clinical director of~~
14 ~~a developmental center~~, or any other person in charge of the state
15 ~~hospital or developmental center~~, as the case may be, shall use
16 every available means to immediately investigate all reported or
17 suspected violations of subdivision (a), including, but not limited
18 to, the use of forensically acceptable means of preserving and
19 testing the suspected gassing substance to confirm the presence of
20 human excrement or other bodily fluids or bodily substances. If
21 there is probable cause to believe that the individual has violated
22 subdivision (a), the director may, when he or she deems it
23 medically necessary to protect the health of an officer or employee
24 who may have been subject to a violation of this section, order the
25 individual to receive an examination or test for hepatitis or
26 tuberculosis or both hepatitis and tuberculosis on either a voluntary
27 or involuntary basis immediately after the event, and periodically
28 thereafter as determined to be necessary by the director in order
29 to ensure that further hepatitis or tuberculosis transmission does
30 not occur. These decisions shall be consistent with an occupational
31 exposure as defined by the Centers for Disease Control and
32 Prevention. The results of any examination or test shall be provided
33 to the officer or employee who has been subject to a reported or
34 suspected violation of this section. Nothing in this subdivision
35 shall be construed to otherwise supersede the operation of Title 8
36 (commencing with Section 7500) of Part 3. Any person performing
37 tests, transmitting test results, or disclosing information pursuant
38 to this section shall be immune from civil liability for any action
39 taken in accordance with this section.

1 (e) The director or other person in charge of the state hospital
2 ~~or developmental center~~ shall refer all reports for which there is
3 probable cause to believe that the individual has violated
4 subdivision (a) to the local district attorney for prosecution.

5 (f) Nothing in this section shall preclude prosecution under both
6 this section and any other provision of law.

7 SEC. 2. (a) The State Department of Mental Health~~and the~~
8 ~~State Department of Developmental Services~~ shall report to the
9 Legislature, by January 1, 2015, ~~their respective~~ *its* findings and
10 recommendations on gassing incidents at state hospitals~~and~~
11 ~~developmental centers~~ and the medical testing authorized by this
12 section. The report shall include, but not be limited to, all of the
13 following:

14 (1) The total number of gassing incidents at each state hospital
15 ~~or developmental center~~ up to the date of the report.

16 (2) The disposition of each gassing incident, including the
17 administrative penalties imposed, the number of incidents that are
18 prosecuted, and the results of those prosecutions, including any
19 penalties imposed.

20 (3) A profile of the individuals who commit the aggravated
21 batteries, including the number of individuals who have one or
22 more prior serious or violent felony convictions.

23 (4) Efforts that the department has taken to limit these incidents,
24 including staff training and the use of protective clothing and
25 goggles.

26 (5) The results and costs of the medical testing authorized by
27 this section.

28 (b) This section shall remain in effect only until January 1, 2016,
29 and as of that date is repealed, unless a later enacted statute that
30 is enacted before January 1, 2016, deletes or extends that date.

31 SEC. 3. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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